

U. S. PTO Customer No. 25280

Case #5682A

**REMARKS****35 USC Section 102 Rejections:**

Claims 1 – 3, 5 – 9 and 11 were rejected under 35 USC Section 102(b) as anticipated by Bullock et al. (US Patent No. 6,251,210).

The Examiner submits that Bullock et al. disclose a treated textile fabric comprising two chemical treatments with the primary comprising at least about 5 weight percent of a fluorochemical and the secondary comprising the same composition as the primary except the fluorochemical comprises at least about 4 weight percent of the composition (Abstract). The Examiner takes the position that less than about 4 weight percent (Applicant) and at least about 4 weight percent (Bullock et al.) both extend beyond the value of 4 percent: 4.1% for Applicant and 3.9% for Bullock et al. Therefore, the Examiner believes the applied art anticipates the instantly claimed fluorochemical level. The primary treatment may also contain one or more antimicrobial agents, fluoropolymers, and cross-linked resins (col. 4, lines 42-44, col. 12, lines 7-31). The fluorochemicals provide water repellence and stain resistance (col. 12, lines 9-14). The Examiner further contends that Bullock et al. teach that the preferred latex component of the primary fluorochemical treatment may comprise acrylate copolymers and terpolymers of methylacrylate (co. 11, lines 17-49). The applied article teaches the use of unblocked poly-isocyanate (col. 1, lines 44-66).

The Examiner further contends, with regard to claims 5 and 6, that the anti-microbial agent may be "any substance or combination of substances that kills or prevents the growth of a microorganism and includes antibiotics, antifungals, antiviral, and antialgal agents which includes triclosan and Zinc Omadine<sup>TM</sup> (col. 11, lines 50-59).

Applicants have further amended claim 1 to recite that the crosslinking component is a hydrophobic crosslinking component. Bullock et al. fail to teach a hydrophobic crosslinking component. Furthermore, Applicants respectfully note that the treating composition taught by Bullock et al. includes two treatments which together comprise 9 weight percent of treating composition applied to the textile fabric - 5% for the primary treatment and 4% for the secondary treatment. Thus, Since Bullock et al. fail to teach a hydrophobic crosslinking agent and a treating composition comprising less than about 4 weight percent, Applicants respectfully contend that these claims are not anticipated by Bullock et al. Reconsideration and withdrawal of the rejection is earnestly requested.

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35 USC Section 102/103 Rejections:

Claims 24 and 33 were rejected under 35 USC Section 102(b) as anticipated by, or in the alternative, under 35 USC Section 103(a) as obvious over Bullock et al.

Applicants have cancelled claims 24 and 33. Thus, Applicants respectfully submit that this rejection is now moot.

35 USC Section 103 Rejections:

Claims 10 and 34 were rejected under 35 USC Section 103(a) as unpatentable over Bullock et al. as applied to claims 9 and 33 and further in view of Fitzgerald et al. (USPN 6,451,717).

The Examiner submits that Bullock is silent as to the fluoropolymers to be used in the treated textile. The Examiner cites Fitzgerald et al. to teach an aqueous emulsion for imparting oil and water repellency to textiles comprising an aromatic blocked isocyanate and fluoropolymer (Abstract). The Examiner further states that the patent teaches the use of fluoropolymers that include perfluoroalkyl groups connected to polyurethane or (meth)acrylate groups (col. 1, lines 60-67). (Meth)acrylate is to include methacrylate, acrylate, or a combination of these groups (col. 1, line 67 – col. 2, line 2). Thus, the Examiner contends that it would have been obvious to a person having ordinary skill in the art to modify the article of Bullock et al. with the fluoropolymers of Fitzgerald et al.

Applicants have cancelled claim 34.

With regard to claim 10, Applicants respectfully reiterate the argument presented above. Claim 10 depends indirectly from claim 1. Applicants previously amended claim 1 to modify the concentration of the treating composition that is applied to the textile substrate. More specifically, Applicants now claim a concentration of less than about 4 weight percent. In contrast, Bullock et al. teach the need for at least about 9 weight percent on the surface of the treated fabric, which is a clear teaching away from Applicants' claimed invention. Case law states that "[A] prior art reference may be considered to teach away when 'a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent

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from the path that was taken by the applicant." Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 1998 WL 117765 at \*8 (Fed. Cir. 1998); In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Thus, since claim 34 has been cancelled and claim 10 depends indirectly from claim 1, Applicants respectfully submit that the rejection of claims 10 and 34 should not be maintained.

Claims 1-4, 7-11, 24 and 33-34 were rejected under 35 USC Section 103(a) as unpatentable over Linert et al. (US 2003/139521 A1).

The Examiner contends that Linert et al. teach a fluorochemical composition to render a fabric oil and/or water repellent comprising not more than 4% fluoropolymer such as a fluorinated ester, blocked isocyanates, fungicidal agents (Abstract, [0071-73]). The applied patent is silent as to the hydrophobicity of the disclosed crosslinking components. However, as the invention is directed for use as a stain and water repellent textile fabric, the Examiner believes it is reasonable to presume that the crosslinking agents taught by Linert et al. are hydrophobic. The applied patent is also silent as to the incorporation of an antimicrobial agent. However, the Examiner contends that it would have been obvious to one having ordinary skill in the art to use an antimicrobial agent in the article of Linert et al. since the article already includes a fungicidal agent.

Applicants have cancelled claims 9, 24 and 33-34.

With regard to claims 1-4, 7-8 and 10-11:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (MPEP § 2143.03). Applicants respectfully submit that Linert et al. fail to teach each and every limitation of the invention as recited in the claims. For example, Linert et al. fail to teach a fluorochemical-containing soil release component, as recited in claim 1. Additionally, Linert et al. also fail to teach a fluorochemical-containing soil release component selected from the group consisting of acrylate-containing polymers, methacrylate-containing polymers, urethane-containing polymers, and fluorinated esters, as recited in claim 2. Linert et al. also fail to teach an antimicrobial agent and further fail to teach those antimicrobial agents recited in claims 5 and 6.

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Accordingly, since the cited art fails to teach the limitations as claimed by Applicants in independent claim 1, and since all of the other rejected claims each depend directly or indirectly from this claim (or the claims have been cancelled), Applicants respectfully submit that the obviousness rejection of claims 1-4, 7-11, 24 and 33-34 should not be maintained.

Double Patenting Rejection:

Claims 1-11, 24 and 33-34 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7, 24-25, 39-34; 1-70; and 1-21 of copending Application Nos. 10/659,900; 10/785,218; and 10/780,976. Although the conflicting claims are not identical, the Examiner believes they are not patentably distinct from each other because all of the applications are directed to fluorochemically-treated fabrics.

Applicants are willing to file terminal disclaimers to obviate this rejection after all other issues of patentability have been resolved.

Conclusion:

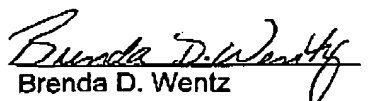
For the reasons set forth above, it is respectfully submitted that all claims now stand in condition for allowance. Should any issues remain after consideration of this Amendment and accompanying Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

In the event that there are additional fees associated with the submission of these papers (including extension of time fees), authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

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